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LLC

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

AMERICA CHUNG NAM, LLC,

*Plaintiff,*

v.

MITSUI O.S.K. LINES, LTD., MOL  
(AMERICAS) LLC, and MOL  
DRYBULK, LTD.,

*Defendants.*

Case No. 2:23-cv-07676-SB-JPR

Hon. Stanley Blumenfeld, Jr.

**NOTICE OF MOTION AND MOTION  
TO REMAND BY PLAINTIFF  
AMERICA CHUNG NAM, LLC**

Hearing:

Date: December 1, 2023

Time: 8:30 a.m.

Place: Courtroom 6C

350 W. First Street

Los Angeles, CA 90012

Judge: Stanley Blumenfeld, Jr.

Action Filed: August 14, 2023

Removed: September 14, 2023

Trial Date: None Set

PLEASE TAKE NOTICE THAT on December 1, 2023, or as soon as the matter may be heard by the Honorable Stanley Blumenfeld Jr. of the United States District Court for the Central District of California, located at 350 West First Street, Los Angeles, California, Plaintiff America Chung Nam, LLC (“ACN” or “Plaintiff”) will and hereby does move this Court for an order immediately remanding the above-captioned case to the Honorable Timothy Patrick Dillon, Department 73, of the Superior Court of the State of California for the County of Los Angeles, Case No. 23STCV19358.

Remand is appropriate because Defendants Mitsui O.S.K. Lines, Ltd., MOL Drybulk, Ltd. and MOL (Americas) LLC (together, “Defendants”) have not satisfied their burden of showing that removal is proper. *First*, Defendants fail to show that this Court has subject matter jurisdiction under sections 203 and 205 of the Federal Arbitration Act. 9 U.S.C. §§ 203, 205. That is because ACN’s state court action does not seek to enforce either an arbitration agreement or an arbitral award. Therefore, ACN’s case does not fall under section 203’s subject matter jurisdiction provision. *Second*, Defendants fail to show that this Court has federal admiralty jurisdiction because ACN’s case involves neither a tort, nor any other factual event, occurring on navigable waters. *Third*, Defendants fail to show that this Court has subject matter jurisdiction on the basis of diversity. ACN’s First Amended Complaint does not specify an amount in controversy. Therefore, Defendants bear the burden of showing, by a preponderance of the evidence, that the amount in controversy is over \$75,000. Defendants have not met that burden. *Finally*, even if this Court were to determine that it has subject matter jurisdiction over ACN’s state court action, remand is nevertheless appropriate here under the *Younger* abstention doctrine because: (1) ACN’s state court action is ongoing; (2) the state court action implicates important state interests; (3) Defendants are not barred from litigating their federal claims in the state court action; and (4) Defendants’ federal court action impermissibly seeks to enjoin or dismiss ACN’s state court action.

1 This motion will be based on this Notice of Motion and Motion, and the  
2 supporting Memorandum of Points and Authorities filed hereto, and other pleadings,  
3 records and papers on file in this action, and any such other evidence as may be  
4 presented at the time of the hearing on this Motion.

5  
6 Dated: October 24, 2023

GIBSON, DUNN & CRUTCHER LLP  
JAMES J. FARRELL  
DIANE CHAN  
ZACHARY A. KADY

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10 By: /s/ James J. Farrell

11 James J. Farrell

12 *Attorneys for Plaintiff America Chung Nam, LLC*  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On August 14, 2023, Plaintiff America Chung Nam, LLC (“Plaintiff” or “ACN”) commenced an action in Los Angeles Superior Court to hold Defendants Mitsui O.S.K. Lines, Ltd., MOL Drybulk, Ltd. and MOL (Americas), LLC (together, “Defendants”) accountable for their unlawful attempts to exploit the extraordinary circumstances caused by the COVID-19 pandemic to engage in unfair and unlawful business practices in violation of California state law. Shortly thereafter, ACN served Defendants with discovery requests—including a specific form of interrogatory that is uniquely available to ACN under California’s civil procedure rules—to seek information and admissions regarding Defendants’ unlawful business practices.

Rather than face ACN’s allegations and discovery in state court, Defendants instead immediately filed a notice of removal and motion to compel arbitration— notwithstanding the fact that Defendants easily could—and should—have raised their arbitration defense in the state court action. Now, in a barely disguised attempt at forum shopping, Defendants demand that this Court dismiss ACN’s state court action in its entirety, or, in the alternative, stay that action pending arbitration. Arbitration Motion<sup>1</sup> at 2. Either outcome would force ACN to abandon its pending discovery requests, including those that are only available to ACN in the state court action pursuant to California civil procedure rules.

This Court should deny Defendants’ attempt to remove the state court action for several independent reasons. *First*, Defendants incorrectly claim that sections 203 and 205 of the Federal Arbitration Act (“FAA”) grant this Court subject matter jurisdiction over ACN’s case. Notice<sup>2</sup> ¶¶ 5-12. The plain language of the FAA, as well as the

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<sup>1</sup> “Arbitration Motion” refers to the “Motion to Dismiss First Amended Complaint Or, In The Alternative, To Stay And Compel Arbitration,” filed by Defendants in this action on October 6, 2023.

<sup>2</sup> “Notice” refers to the Notice of Removal filed by Defendants in this action on September 14, 2023, including any exhibits thereto.



1 allegations on the face of ACN’s First Amended Complaint (“FAC”), make clear that  
2 ACN’s case does not fall under the FAA’s subject matter jurisdiction provisions  
3 because it does not seek to enforce an arbitration agreement, nor does it seek to enforce  
4 an arbitral award.

5 *Second*, Defendants incorrectly argue that this Court may exercise federal  
6 admiralty jurisdiction over the state court action pursuant to 28 U.S.C. § 1333(1).  
7 Here again, Defendants’ assertion is flatly repudiated by well-settled law that limits the  
8 application of federal admiralty jurisdiction to cases involving either a tort, or some  
9 other factual event, that occurred on navigable waters. ACN’s case has neither.

10 *Third*, Defendants have not demonstrated that this Court has subject matter  
11 jurisdiction on the basis of diversity pursuant to 28 U.S.C. § 1332(a). Because ACN’s  
12 FAC does not specify, on its face, an amount in controversy, Defendants have the  
13 burden of showing, “by a preponderance of the evidence,” *Matheson v. Progressive*  
14 *Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003), that the amount in controversy  
15 threshold for diversity purposes has been satisfied. Defendants have not met that  
16 burden.

17 *Finally*, Defendants’ claims regarding subject matter jurisdiction ultimately ring  
18 hollow because ACN’s case falls squarely within the types of cases to which the  
19 *Younger* abstention doctrine should apply. Pursuant to that doctrine, this Court can,  
20 and should, abstain from deciding ACN’s federally removed case, even if the Court  
21 were to determine that it has subject matter jurisdiction.

22 For the aforementioned reasons, ACN therefore requests that this Court deny  
23 Defendants’ removal request, dismiss Defendants’ motion to compel arbitration, and  
24 remand ACN’s case back to the Los Angeles Superior Court.

## 25 **II. BACKGROUND**

26 ACN respectfully refers the Court to, and incorporates by reference, the facts set  
27 forth in Plaintiff’s Opposition to Defendants’ Motion to Dismiss, Or In The  
28 Alternative, To Stay And Compel Arbitration (“Opposition”), filed herewith.

### III. LEGAL STANDARD

Under 28 U.S.C. § 1441(a), “[o]nly state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987) (citing 28 U.S.C. § 1441(a)). Courts “strictly construe the removal statute against removal jurisdiction.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The “strong presumption” against removal jurisdiction means that “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance,” *id.* at 566, and “the defendant always has the burden of establishing that removal is proper,” *id.* (quoting *Nishimoto v. Federman-Bachrach & Assocs.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988)). “[It] is now settled law” that the defendant fails to satisfy that burden if they seek removal “on the basis of a federal defense . . . even if the defense is anticipated in the plaintiff’s complaint, and even if both parties concede that the federal defense is the only question truly at issue.” *Caterpillar*, 482 U.S. at 393; *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). That is because as “the master of [its] claim[s],” the plaintiff “may avoid federal jurisdiction by exclusive reliance on state law[,]” should they choose to do so. *Caterpillar*, 482 U.S. at 392, 399 (if the defendant could manipulate “the forum in which the claim shall be litigated” based on the substance of his defense, “the plaintiff would be master of nothing.”).

### IV. ARGUMENT

Defendants have not satisfied their “burden of establishing that removal [of ACN’s state court action] is proper.” *Gaus*, 980 F.2d at 566. Defendants seek removal on three separate grounds: (i) subject matter jurisdiction under sections 203 and 205 of the FAA, Notice ¶¶ 5-12; (ii) federal admiralty jurisdiction pursuant to 28 U.S.C. § 1333(1) and 28 U.S.C. § 1441(a), *id.* ¶ 14; and (iii) subject matter jurisdiction under 28 U.S.C. § 1332(a) on the basis of diversity, *id.* ¶ 13. For the reasons discussed below, Defendants’ arguments in support of removal on these grounds are unavailing.

1 Therefore, this Court does not have subject matter jurisdiction over ACN's state court  
2 action. Furthermore, Defendants' claims regarding subject matter jurisdiction are  
3 ultimately beside the point because the *Younger* abstention doctrine applies here.  
4 *Younger* demands dismissal of Defendants' motion to compel arbitration, and remand  
5 of ACN's case, regardless of whether or not the Court has subject matter jurisdiction.

6 **A. This Court Does Not Have Subject Matter Jurisdiction Under 9**  
7 **U.S.C. §§ 203, 205.**

8 Defendants first contend that this Court has subject matter jurisdiction pursuant  
9 to sections 203 and 205 of the FAA. But neither the statutory language of the FAA,  
10 nor the allegations on the face of ACN's complaint, support that claim.

11 To start, Defendants rely on a fundamental misreading of sections 203 and 205.  
12 Those provisions grant federal district courts with separate and distinct forms of  
13 jurisdiction under the FAA. Section 205 confers federal district courts with *removal*  
14 *jurisdiction* over a state court action or proceeding whose "subject matter . . . relates to  
15 an arbitration agreement or award falling under the [New York Convention on the  
16 Recognition and Enforcement of Foreign Arbitral Awards ("Convention")].” 9 U.S.C.  
17 § 205. However, section 205 does not, by itself, grant federal courts with *subject*  
18 *matter jurisdiction* over such cases. Instead, federal courts must rely on section 203 to  
19 establish subject matter jurisdiction under the FAA. *See Infuturia Global Ltd. v.*  
20 *Sequus Pharmaceuticals, Inc.*, 631 F.3d 1133 (9th Cir. 2011) (finding that federal  
21 district court had removal jurisdiction pursuant to 9 U.S.C. § 205 over state action to  
22 enforce arbitral award, but declining to find whether federal court also had subject  
23 matter jurisdiction over the case pursuant to 9 U.S.C. § 203). Section 203 grants  
24 federal district courts with subject matter jurisdiction over “action[s] or proceeding[s]  
25 that fall under the Convention.” 9 U.S.C. § 203. “[A] federal court must have both  
26 removal and subject matter jurisdiction to hear a case removed from state court.”  
27 *Infuturia*, 631 F.3d at 1135 n.1.

1 Defendants' removal argument under the FAA fails at the outset because it  
2 conflates sections 203 and 205. In particular, Defendants' argument for why this Court  
3 has subject matter jurisdiction under the FAA rests entirely on section 205 alone.  
4 Indeed, Defendants repeatedly invoke the legal standard under section 205 to discuss  
5 why ACN's state court action purportedly "relates to" the arbitration provision in the  
6 parties' shipping contract, which Defendants, in turn, argue is the type of agreement to  
7 which the Convention applies. *See* Notice ¶¶ 6-10 (claiming that ACN's state court  
8 action "relates" to an arbitration agreement that falls under the Convention, pursuant to  
9 9 U.S.C. §§ 202, 205). But section 205 only grants federal courts removal jurisdiction  
10 where other requirements of that statute have been met; it does not confer subject  
11 matter jurisdiction.

12 In fact, Defendants' only attempt at addressing subject matter jurisdiction under  
13 section 203 is to state, in passing, that such jurisdiction exists here because "Plaintiff's  
14 action *arises out of contracts* for the charter of oceangoing vessels, each of which  
15 included an agreement to arbitrate *falling under the provisions of*" the FAA and  
16 Convention. Notice ¶ 5 (emphasis added). That statement is no more than a re-  
17 phrasing of the legal standard for *removal jurisdiction* under section 205, and bears no  
18 resemblance to either the plain language or meaning of section 203. *See* 9 U.S.C. §§  
19 203, 205. To be clear, the legal standard for determining *subject matter jurisdiction*  
20 under section 203 is not, as Defendants claim, whether a state court action "arises out  
21 of [a] contract" that "fall[s] under the provisions of" the FAA. *Id.* Instead, the state  
22 court action *itself* must be the type of "action or proceeding" that is covered by the  
23 provisions of the FAA. *See* 9 U.S.C. § 203. The Supreme Court, this Court, and the  
24 plain language of the Convention itself, all make clear that the only types of actions or  
25 proceedings that the FAA applies to are: (1) actions to enforce an arbitration  
26 agreement that itself satisfies the requirements of section 202 of the FAA; or (2)  
27 actions to enforce an arbitral award against any other party to an arbitration agreement  
28 falling under the Convention. *See, e.g.,* 9 U.S.C. §§ 206, 207; *Kirby Morgan, Inc. v.*

1 *Hydrospace, Ltd.*, 2009 WL 32588, at \*4 (C.D. Cal. 2009); *GE Energy Power*  
2 *Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC et al.*, 140 S. Ct.  
3 1637, 1644 (2020); Convention, art. I(1), 21 U.S.T. 2517.

4 ACN's state court action is plainly neither an action to enforce an arbitration  
5 agreement, nor an action to confirm an arbitral award. Thus, even if Defendants had  
6 properly applied section 203 to ACN's state court action, that provision cannot confer  
7 this Court with subject matter jurisdiction over ACN's case. That Defendants are now  
8 seeking to compel arbitration of ACN's claims under federal law does not change that  
9 conclusion. *First*, it is axiomatic that "a case may not be removed to federal court on  
10 the basis of a federal defense," where, as is the case here, plaintiff's state court action  
11 only asserts causes of action under state law. *Caterpillar*, 482 U.S. at 393. As the  
12 "master of [its] claim[s]," ACN is entitled to "avoid federal jurisdiction by exclusive  
13 reliance on state law." *Id.* *Second*, as discussed further in ACN's Opposition,  
14 Defendants' motion to compel arbitration fails regardless because the parties amended  
15 their shipping contract in April 2022 to acknowledge that ACN could not use  
16 Defendants' vessels, and to change the dispute resolution process accordingly by  
17 dropping the arbitration provision. *See* Opposition at Part III.A.

18 Because Defendants do not—and cannot—show that this Court has both section  
19 205 removal jurisdiction and section 203 subject matter jurisdiction, their argument  
20 that ACN's case is removable under the FAA fails.

21 **B. This Court Does Not Have Federal Question Jurisdiction Under**  
22 **Federal Admiralty Laws.**

23 Defendants claim that this Court has federal question jurisdiction over ACN's  
24 state court action because it "relates to and arises out of maritime contracts (i.e., vessel  
25 charter parties) and thus . . . falls within federal admiralty jurisdiction pursuant to 28  
26 U.S.C. § 1333(1)." Notice ¶ 14. Defendants are wrong.

27 It is black-letter law that "[a] party seeking to invoke federal maritime  
28 jurisdiction over a tort claim must satisfy *both* a location test and a connection test."

1 *Gruver v. Lesman Fisheries Inc.*, 489 F.3d 978, 982 (9th Cir. 2007) (emphasis added).

2 More specifically:

3 The location test focuses on whether the tort occurred on navigable water or  
4 whether injury suffered on land was caused by a vessel on navigable water. The  
5 connection test has two prongs, each of which must be met for admiralty  
6 jurisdiction to be proper: A court, first, must assess the general features of the  
7 type of incident involved to determine whether the incident has a potentially  
8 disruptive impact on maritime commerce. The second prong of the connection  
9 test requires us to examine whether the general character of the activity giving  
10 rise to the incident shows a substantial relationship to traditional maritime  
11 activity.

12 *Id.* (internal quotation marks and citations omitted); *Grubart v. Great Lakes Dredge &*  
13 *Dock Co.*, 513 U.S. 527, 534 (1995). Those tests are not met here. To start, none of  
14 the allegations in ACN’s state court case concern any cause of action or other factual  
15 event that occurred on “navigable water.” *Id.*; see Notice at Ex. A. To the contrary,  
16 ACN alleges that it “*could not use* [Defendants’] vessels to export wood chips to  
17 China[.]” Notice at Ex. A ¶ 6 (emphasis added). Therefore, Defendants cannot satisfy  
18 the “location test.” *Gruver*, 489 F.3d at 982. Their inability to do so is fatal to their  
19 claim of federal admiralty jurisdiction under 28 U.S.C. § 1333(1) because Defendants  
20 must show that *both* the “location test” and the “connection test” are satisfied in order  
21 for federal admiralty jurisdiction to apply. *Id.*; *Grubart*, 513 U.S. at 527.

22 **C. This Court Does Not Have Subject Matter Jurisdiction on the Basis of**  
23 **Diversity.**

24 Defendants allege that this Court “also has subject matter jurisdiction under 28  
25 U.S.C. § 1332(a) on the basis of diversity.” Notice ¶ 13. For purposes of 28 U.S.C.  
26 § 1332(a) “diversity” only exists “where the matter in controversy exceeds the sum or  
27 value of \$75,000, exclusive of interest and costs, and is between . . . citizens of  
28 different States and in which citizens or subjects of a foreign state are additional  
parties[.]” There is no such diversity here because Defendants’ allegations regarding  
the amount in controversy are based on speculation. That is insufficient to defeat



1 remand. *See Thompson v. Payless Shoesource, Inc.*, 2009 WL 10674309, at \*2 (C.D.  
2 Cal. Aug. 18, 2009) (a speculative argument regarding the potential value of the  
3 amount in controversy is insufficient to overcome remand).

4 Where a complaint filed in the state court does not specify damages in excess of  
5 the federal jurisdictional limit, “it is not facially evident from the . . . complaint that the  
6 controversy involves more than \$75,000.” *Matheson*, 319 F.3d at 1091. Accordingly,  
7 the removing defendant must set forth “in the removal petition itself, the underlying  
8 facts supporting its assertion that the amount in controversy exceeds [\$75,000].”  
9 *Gaus*, 980 F.3d at 567. The facts set forth must prove by a preponderance of the  
10 evidence that the amount in controversy exceeds the jurisdictional threshold.  
11 *Matheson*, 319 F.3d at 1090; *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699  
12 (9th Cir. 2007); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir.  
13 1996). A case must be remanded when it is questionable whether the defendant has  
14 met this burden. *See, e.g., Gaus*, 980 F.2d at 566 (The “strong presumption” against  
15 removal jurisdiction means that “federal jurisdiction must be rejected if there is any  
16 doubt as to the right of removal in the first instance”).

17 There are no allegations on the face of ACN’s FAC that specify an amount in  
18 controversy, let alone an amount that exceeds \$75,000. The primary allegations at  
19 issue in the FAC are Defendants’ violations of California’s unfair competition laws  
20 pursuant to sections 17200 and 17500 of the California Business and Professions Code.  
21 These statutory claims do not provide for damages. *See Cal. Bus. & Prof. Code*  
22 *§§ 17200 et seq., 17500 et seq.* Furthermore, the primary relief sought in the FAC is  
23 equitable—namely, injunctions preventing Defendants’ continued violation of these  
24 laws. Under these circumstances, Defendants bear the burden of proving, “by a  
25 preponderance of the evidence,” that the amount in controversy exceeds the \$75,000  
26 jurisdictional threshold. *Matheson*, 319 F.3d at 1090. They have not done so.

1 Accordingly, this Court does not have diversity jurisdiction over ACN's state court  
2 action.<sup>3</sup>

3 **D. This Court Should Deny Defendants' Motion to Dismiss and Compel**  
4 **Arbitration Under the *Younger* Abstention Doctrines.**

5 Even if this Court were to find that it has subject matter jurisdiction over ACN's  
6 state court action for the reasons enumerated by Defendants, it should nevertheless  
7 abstain from adjudicating ACN's case under the *Younger* abstention doctrine. *See*  
8 *Younger v. Harris*, 401 U.S. 37, 45 (1971). That doctrine "embodies a strong federal  
9 policy against federal-court interference with pending state judicial proceedings,  
10 absent extraordinary circumstances." *Beltran v. State of California*, 871 F.2d 777, 781  
11 (9th Cir. 1988) (quoting *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*,  
12 457 U.S. 423, 431 (1982)); *Younger*, 401 U.S. at 45. Defendants' attempt to dismiss,  
13 or in the alternative enjoin, ACN's state court action by removing it to federal court  
14 falls squarely within the types of cases to which the *Younger* abstention principles  
15 apply.

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19 <sup>3</sup> Defendants' papers filed in support of their own Arbitration Motion confirm  
20 that a Hong Kong-based affiliate of ACN, Hong Kong Chung Nam Trading Co.  
21 Limited ("ACN Hong Kong"), was appointed as an agent to ACN's and  
22 Defendants' shipping contract. *See* Declaration of Conte C. Cicala in Support of  
23 Defendants' Application to Seal Exhibits and Portions of Defendants' Motion to  
24 Dismiss First Amended Complaint or, in the Alternative, to Stay and Compel  
25 Arbitration, at Exhibit 2 ¶ 70. Therefore, should this Court find that diversity  
26 jurisdiction exists here, ACN respectfully requests the opportunity to amend its  
27 FAC to include ACN Hong Kong as an indispensable party. As explained by the  
28 Ninth Circuit, where a missing party is in privity or has a sufficiently close  
relationship to an existing party such that collateral estoppel may arise, the missing  
party should be added and the action remanded to state court if the missing party  
destroys diversity jurisdiction. *Takeda v. Nw. Nat. Life Ins. Co.*, 765 F.2d 815, 821  
(9th Cir. 1985). *See also CF Med., LLC v. St. Alexius Hosp. Corp.*, 2011 WL  
1990557, at \*7 (C.D.Cal. May 20, 2011) (finding that intervenor was an  
indispensable party because "Plaintiff and Defendants run the risk of prevailing in  
this matter only to find that they cannot collect on their judgment because  
[intervenor] is the true owner of the Accounts" and then remanding the action for  
further proceedings); *Uzoabo v. Ocwen Loan Servicing LLC*, 2013 WL 6018067, at  
\*4 (C.D. Cal. Nov. 12, 2013) (ordering remand). As ACN Hong Kong is the real  
party in interest, it is indispensable and warrants remand to state court.



1 *Younger* abstention requires federal courts to refrain from exercising jurisdiction  
2 where four requirements are met: “(1) a state initiated proceeding is ongoing; (2) the  
3 proceeding implicates important state interests; (3) the federal plaintiff is not barred  
4 from litigating federal constitutional issues in the state proceeding; and (4) the federal  
5 court action would enjoin the [state court] proceeding or have the practical effect of  
6 doing so, *i.e.*, would interfere with the state proceeding in a way that *Younger*  
7 disapproves.” *San Jose Silicon Valley Chamber of Commerce Political Action*  
8 *Committee v. City of San Jose*, 546 F.3d 1087, 1092 (9th Cir. 2008). Issuing a “stay”  
9 of the federal action is not sufficient; *Younger* abstention requires dismissal where the  
10 *Younger* factors are satisfied. *Beltran*, 871 F.2d at 781. Because each of these four  
11 factors is satisfied here, the Court must dismiss this action to allow ACN’s state court  
12 action to proceed accordingly.

13 **1. ACN’s State Court Action Is Ongoing.**

14 There can be no doubt that a state-initiated proceeding is ongoing. On August  
15 14, 2023, ACN filed its initial summons and complaint against Defendants in Los  
16 Angeles Superior Court. ACN filed its first amended summons and complaint against  
17 Defendants on September 11, 2023. On September 13, 2023, ACN served  
18 interrogatories, requests for admissions, and requests for documents on Defendants.  
19 Defendants filed their Notice of Removal on September 14, 2023. “*Younger*  
20 abstention is required . . . when state court proceedings are initiated before any  
21 proceedings of substance on the merits have taken place in the federal court.” *M & A*  
22 *Gabae v. Cmty. Redevelopment Agency*, 419 F.3d 1036, 1040 (9th Cir. 2005) (quoting  
23 *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 238 (1984)) (emphasis omitted).  
24 Moreover, for purposes of *Younger* abstention, a state proceeding is “initiated no later  
25 than when it is filed.” *Id.* (quotation marks omitted). Because ACN’s state court  
26 action was filed before Defendants’ initiation of their federally removed action, the  
27 first prong of the *Younger* analysis is easily satisfied.

28 **2. ACN’s State Court Action Implicates Important State Interests.**

1 ACN's lawsuit against Defendants implicates important California state  
2 interests. When assessing the importance of a state's interests, courts "do not look  
3 narrowly to its interest in the outcome of the particular case." *New Orleans Public*  
4 *Service, Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 365 (1989). Rather,  
5 courts consider "the importance of the generic proceedings to the State." *Id.*

6 Courts have repeatedly held that states have an important interest in protecting  
7 consumers from unfair and deceptive business practices, and providing compensation  
8 to consumers harmed by those practices. *See Monster Beverage Corp. v. Herrera*, 650  
9 F. App'x 344, 346 (9th Cir. 2016) ("Younger abstention is appropriate as the People of  
10 California have a strong interest in ensuring that a company providing consumer  
11 products is doing so in a manner consistent with the state's unfair business practices  
12 laws."); *Commuc 'ns Telesystems Intern. v. Cal. Public Util. Comm'n*, 196 F.3d 1011,  
13 1017 (9th Cir. 1999) (noting that states have an important interest in protecting  
14 consumers from unfair and deceptive business practices); *Meredith v. Oregon*, 321  
15 F.3d 807, 818 (9th Cir. 2003) (noting that protecting residents' safety is a vital state  
16 interest).

17 Here, ACN's state court action directly implicates California's important  
18 interests in protecting its residents from unfair and unlawful business practices, and  
19 from fraudulent advertising. In particular, ACN seeks to hold Defendants accountable  
20 for exploiting the COVID-19 pandemic to engage in price gouging during an ongoing  
21 state of emergency, in violation of section 396 of the California Penal Code. *See*  
22 Notice at Ex. A ¶¶ 44-53. ACN also seeks to hold Defendants liable for false and  
23 misleading statements that Defendants made in connection with the promotion of their  
24 services during the pandemic. *Id.* ¶¶ 54-89. Those statements included repeated  
25 assurances Defendants made to customers, including ACN, that Defendants were  
26 committed to maintaining safe operations during the pandemic, and would work with  
27 customers to mitigate any inconvenience caused by the pandemic. *Id.* Furthermore,  
28 ACN's complaint seeks a public injunction prohibiting Defendants' ongoing false and

1 deceptive concept. *Id.* at 19. In short, the second prong of the *Younger* abstention  
2 doctrine is plainly met here.

3 **3. Defendants Are Not Barred From Litigating Their Claims in**  
4 **the State Court Action.**

5 *Younger*'s third requirement is easily satisfied because Defendants may raise  
6 their motion to compel arbitration (or any other legal challenge) in ACN's state court  
7 action. State court proceedings are presumed adequate to adjudicate federal claims "in  
8 the absence of unambiguous authority to the contrary." *Pennzoil Co. v. Texaco, Inc.*,  
9 481 U.S. 1, 15 (1987). Defendants bear the burden of "show[ing] that state procedural  
10 law bar[s] presentation of [their] claims." *Id.* at 14. The California state court where  
11 ACN's case is pending is competent to decide issues of federal law, including those  
12 that Defendants have raised here. *See Buckeye Check Cashing, Inc. v. Cardegna*, 546  
13 U.S. 440, 445 (2006) ("the FAA created a body of federal substantive law, which was  
14 applicable in state and federal courts." (internal quotation marks and edits omitted)).  
15 Therefore, Defendants cannot meet that burden. *Pennzoil*, 481 U.S. at 15.

16 **4. Defendants' Federal Action Seeks to Interfere With ACN's**  
17 **Ongoing State Court Action.**

18 Finally, the relief that Defendants seek in this action will undoubtedly interfere  
19 with ACN's ongoing state court proceedings. Defendants request an order from this  
20 Court either "dismissing all [of ACN's] claims against them, or in the alternative,  
21 compelling the case to arbitration and staying the entirety of these proceedings pending  
22 resolution of that arbitration." Arbitration Motion at 1. If this Court were to grant  
23 Defendants' relief, ACN would be forced to abandon its ongoing state court case. This  
24 is the quintessential type of interference *Younger* prohibits. *See San Jose Silicon*  
25 *Valley Chamber of Commerce*, 546 F.3d at 1095.

26 *Younger* abstention is particularly appropriate here because ACN has already  
27 served Defendants with discovery requests in the state court action. Those requests  
28 include, among other things, certain forms of interrogatories that are uniquely available

1 to ACN under California procedural rules. Those interrogatories, combined with the  
2 requests for admissions that ACN also previously served, entitle ACN to seek certain  
3 information and admissions from Defendants that otherwise may not be available to it  
4 under the Federal Rules of Civil Procedure. *See* Cal. Civ. Proc. Code § 2033.710.  
5 Applying the *Younger* doctrine under these circumstances would be consistent with  
6 “the national policy forbidding federal courts to stay or enjoin pending state court  
7 proceedings except under special circumstances.” *Younger*, 401 U.S. at 41.

## 8 V. CONCLUSION

9 For the reasons stated herein, the Court should grant ACN’s motion and remand  
10 this case back to its proper forum in Los Angeles Superior Court.

11  
12 Dated: October 24, 2023

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